

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-003-11-1-5-00184-16  
45-003-13-1-5-00160-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-377-004.000-003  
**Assessment Years:** 2011 and 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2011 and 2013 assessments of his property located at 4215 W. 27<sup>th</sup> Place in Gary.<sup>1</sup> The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$7,300 for 2011 and \$4,200 for 2013.
2. Nowacki filed Form 131 petitions with the Board for both years and elected to proceed under our small claims procedures. On August 6, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Robert Metz and Gordona Bauhan, his Hearing Officers. They were all sworn as witnesses.

**RECORD**

4. The official record contains the following:  

Petitioner’s Exhibit 1: Property Record Card for 2014-2018  
Petitioner’s Exhibit 2: Property Record Card for 2008-2013
5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.<sup>2</sup>

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<sup>1</sup> The Form 131 and the Form 115 for 2011 list incorrect addresses for the property.

<sup>2</sup> The Assessor offered no exhibits.

## BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. There was no change in the property's assessment from 2010 to 2011 or from 2012 to 2013. Nowacki therefore bears the burden of proof for both years.

## OBJECTION

8. The Assessor objected to Nowacki's Exhibit 1 on relevance grounds because it does not include information for the tax years in dispute. Nowacki argued it was relevant because it shows the present value is getting closer to his requested valuation. We find the exhibit contains information that is at least marginally relevant to the ultimate valuation question. We therefore overrule the Assessor's objection and admit Exhibit 1.

## SUMMARY OF CONTENTIONS

9. Nowacki's case:
  - a. The property is in an area filled with paper streets, paper alleys, and no utilities that the city has targeted to be over-assessed to prevent ownership by anyone other than the city. Nowacki purchased the property for \$100 in 2010 at an auction attended by 500 able and eligible bidders. It went for the minimal bid of \$100, which established its market value. This is not something one needs to speculate on, it was an actual sale. *Nowacki testimony.*
  - b. During a PTABOA meeting, another taxpayer accused the Assessor of "chasing sales" as a means of raising the assessed value to reflect the purchase price. Nowacki alleges that the Assessor picks and chooses the values that they want to use for tax assessment purposes. If the assessor is interested in chasing sales, he should go to tax sales and the redevelopment commission to discover what properties are actually selling for. *Nowacki testimony.*
  - c. Nowacki thinks a fair value for his property is \$1,800, which is 18 times more than what he paid for it. Since he purchased it, the Assessor has reduced its value down to \$2,800. The Assessor could have lowered the value at the time of appeal, but instead Nowacki has had to contest its value for eight years. *Nowacki testimony; Petr's Ex. 1.*

10. The Assessor's case:

- a. The Assessor contends that Nowacki provided no substantial evidence to support his requested valuations for 2011 or 2013, and he recommends no change to the assessments. *Metz testimony*.

**ANALYSIS**

11. Nowacki failed to make a prima facie case for reducing the property's 2011 or 2013 assessments. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2011 and 2013, the valuation dates were March 1, 2011 and March 1, 2013, respectively. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the property's 2011 and 2013 assessments should be \$1,800, but he failed to present any probative market-based evidence to support that value. Nowacki did offer some general statements about the condition of the area surrounding the property and asserted that the Assessor was chasing sales in order to raise assessments, but statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- d. To the extent Nowacki was asserting that his purchase price of \$100 reflects the property's correct value, we disagree. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, however, Nowacki failed to prove that the sale met the requirements of an open-market, arm's-length transaction. Nor did he attempt to relate the purchase price to either valuation date. Consequently, the purchase price is not probative evidence of the property's market value-in-use.
- e. We also give no weight to his claims regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment in subsequent years does not prove that its 2011 or 2013 assessments were incorrect. As the Tax Court has explained, "each tax year—and each appeal process—stands alone." *Fisher v. Carroll Cnty. Ass'r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, has little bearing on its true tax value in another. See, e.g., *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
- f. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2011 or 2013, he failed to make a prima facie case for a lower assessment for either year. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2011 and 2013 assessments.

ISSUED: November 5, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

James Nowacki  
4215 W. 27<sup>th</sup> Place  
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**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.